

IN THE SUPREME COURT

STATE OF MICHIGAN

---

Appeal from the Michigan Court of Appeals  
Richard A. Bandstra, C.J.; Hilda R. Gage, J.J.; and E. Thomas Fitzgerald, J.J., Presiding  
Concurring and Dissenting Opinion by Richard A. Bandstra, C.J.

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

Supreme Court No. 121189

v

Court of Appeals No. 225855

THOMAS DAVID CRESS,  
Defendant-Appellee.

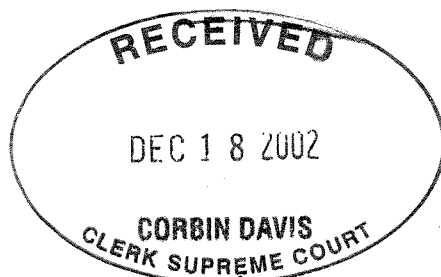
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37<sup>th</sup> Circuit Court No. 84-2098 FC

**BRIEF ON APPEAL - APPELLANT**

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Calhoun County Prosecuting Attorney

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## **PLAINTIFF-APPELLANT'S STATEMENT OF APPELLATE JURISDICTION**

On April 24, 1985, Defendant-Appellee was convicted by jury in the Calhoun County Circuit Court, the Honorable Paul Nicolich, presiding. The Judgment of Sentence was entered on or about June 5, 1985.

The Michigan Court of Appeals issued an opinion saying the trial court reversibly erred by denying Defendant's Motion for New Trial. People v Cress, 250 Mich App 110; 645 NW2d 669 (2002). (Slip op - 30a-58a). The People filed an Application for Leave To Appeal to this Court on March 18, 2002. On June 18, 2002, this Court remanded this case to the 37<sup>th</sup> Circuit Court for an evidentiary hearing on Defendant's claim that the prosecution destroyed material evidence in bad faith. People v Cress, 466 Mich 882; 646 NW2d 469 (6/18/02). (88a).

An evidentiary hearing was held with Honorable Edward J. Grant, Visiting Judge from Jackson County, presiding. (See Judge Grant's Opinion of August 16, 2002). (89a-113a). This Court then issued an order granting the People's Application for Leave To Appeal "limited to whether the defendant is entitled to a new trial on the basis that there is newly discovered evidence in the form of a confession by another to the crime of which defendant was convicted." People v Cress, 467 Mich 889; 653 NW2d 407 (10/23/02). (114a). Thus, this Court asserts jurisdiction, pursuant to MCR 7.301(A)(2).

## **STATEMENT OF QUESTIONS**

### **I. WHETHER THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING DEFENDANT'S MOTION FOR A NEW TRIAL ON THE BASIS OF NEWLY DISCOVERED EVIDENCE?**

Plaintiff-Appellant answers, "Yes."

Defendant-Appellee answers, "No."

The trial court answered, "Yes."

The court of appeals answered, "No."

## **STATEMENT OF LEGAL PROCEEDINGS AND FACTS**

Defendant, Thomas Cress, was convicted by jury of the first-degree felony murder of Patricia "Patty" Rosansky, and sentenced to a term of life imprisonment. On February 4, 1988, the Michigan Court of Appeals affirmed Defendant's conviction. People v Cress, unpublished per curiam opinion of Court of Appeals (Docket No. 86748). (61a-67a). On July 28, 1988, this Court denied Defendant's application for leave to appeal. People v Cress, 431 Mich 856 (1988).

The People adopt a portion of the facts contained in the court of appeals' February 4, 1988 opinion affirming Defendant's conviction, followed by a continuation of the facts from that date to present.

The body of the victim, Patty Rosansky, was found in a wooded ravine, covered with brush on April 6, 1983, in Bedford Township near Battle Creek. She was identified by dental records. Two pieces of tree limb were found located in her throat, which testimony indicated would have been forcibly put there to obstruct her voice. An autopsy and post-mortem examination revealed that the cause of death was a brain injury due to a blow or blows to the head with a club-like object. There were also defensive injuries on the back of her hands. Several bruises also existed on the back of her legs, buttocks, and neck. The body was discovered naked from the waist down with panties located at the ankles. There was evidence of forced anal intercourse.

Rosansky had been missing since February 3, 1983. She had left for school that morning at 7:30 a.m. and was last seen by a school friend. Defendant presented one witness who testified that she had seen Rosansky a few days after she was missing when Rosansky and another person drove past her house in a pick-up truck. Another witness testified that she had seen Patty get into a pick-up truck the morning of February 3. That witness also stated that she saw a man other than Defendant get out of the same truck at a prior time.

Several witnesses testified that Defendant had made statements to them concerning the sexual assault and death of a girl. Defendant lived near Rosansky and had spoken to her. John Moore testified that he lived with Defendant and heard Defendant state in February 1983 after coming home in the evening, that "he felt a little better because he went and knocked off a piece". He also heard Defendant say that he had killed Patty Rosansky.

Terry Moore testified that he lived with Defendant and that in July 1983 Defendant took Terry, his brother Walter, and Cindy Lesley to a wooded area and



pointed out where Rosansky's body lay (and was later found).

Candy Moore testified that Defendant came to her house almost every day in the spring of 1983 and told her on two different occasions that he had killed a girl named Patty [Rosansky] and put her in a ditch.

Emery DeBruine testified that in May 1983 Defendant saw him in a bar and told DeBruine that Defendant had raped and killed a girl because she refused to have sex with him. Defendant also said that it was a perfect crime and that no one would know about it.

Walter Moore testified that Defendant had told him that Defendant had picked Rosansky up and that they had smoked marijuana. Defendant wanted to have sex; and when Rosansky refused, he raped her, killed her, and dumped the body in a wooded area. Moore was a convicted felon; and at the time of confessing his own crimes, he told the police about Defendant's statements.

Defendant allegedly asked several people whether they had ever had sex with a corpse.

Cindy Lesley testified that Defendant had taken her out to the ravine where Rosansky was found and [Defendant] told her that he had killed Rosansky and left her body in the ravine after he covered her. Lesley called the police and eventually received a \$5,000 reward.

Officers Nick Pestun and Marion Bagent were allowed to testify as to prior consistent statements of Walter Moore, Candy Moore, and Cindy Lesley, for the limited purpose of refuting Defendant's charges that the witnesses were influenced.

Shirley House testified that she was the Moore family's landlady and, when she was at the house repairing the steps, had heard Defendant say, "I cannot believe that I got so hard up I had to kill the bitch for a piece of ass".

Defendant took the stand in his own defense and denied that he had killed Rosansky or that he had told anyone that he did so. He stated that he was delivering papers on February 3, 1983. He presented an alibi witness, Doug Moore, who testified that on February 3, 1983, he and Defendant were delivering papers. Defendant did admit to dumping trash illegally at the site where the body was found.

After closing arguments by both counsel, the court instructed the jury on first-degree felony murder, with the predicate felony being first-degree criminal sexual conduct, second-degree murder, and voluntary manslaughter. The jury returned a verdict of guilty of first-degree felony murder.

People v Cress, unpublished Court of Appeals' opinion, Case No. 86748, pp 1-3 (2/4/88); (61a-

63a).

On March 31, 1997, Defendant filed a Motion for a New Trial based on newly discovered evidence. The evidence presented consisted primarily of the third-party confession of Michael “Mike” Ronning to the murder of Patricia Rosansky and two other murders in Calhoun County. The first hearing on Defendant’s motion was held November 5, 1997, before Calhoun Circuit Judge Allen L. Garbrecht. On December 3, 1997, and on December 17, 1997, Judge Garbrecht issued an Opinion and Order, respectively, granting Defendant a new trial. (68a-74a; 75a-76a). The People appealed; and on August 5, 1998, the court of appeals denied the People’s application for leave, but did not affirm the trial court’s order granting a new trial. (77a).

The People moved and was granted, by the trial court, the opportunity to reopen proofs in order to present additional information and evidence that would disprove Mike Ronning’s confession. The hearing on the additional proofs was held over a three-month period from December 1988 through February 1999. On March 4, 1999, the trial court entered an opinion denying Defendant’s motion for a new trial (78a-87a) followed by its March 31, 1999 order denying the same and vacating its original order granting a new trial. (59a).

The trial court found that the additional evidence, presented by the prosecution, pertaining to the veracity of Michael Ronning’s confession overwhelmingly and convincingly established that Michael Ronning was a false confessor.

Specifically, the trial judge found that Ronning’s version of how he killed Patty Rosansky did not match up with the actual cause of death or the circumstances surrounding the death. Judge Garbrecht further found that there were multiple blows to the back of the skull and head but did not specify a number. Notwithstanding some similarities, Judge Garbrecht found that the differences, along with other testimony by family members and cell mate Timothy Dixon

impugning Ronning's credibility, led the trial court to conclude Ronning was lying.

Judge Garbrecht also found that when he compared photos and videos of the crime scene as it appeared today to the photos and the testimony about the crime scene at the time of Rosansky's death, Ronning's complete inability to locate the crime scene could not be attributed to time, lack of memory due to drug use, or changes in the site. The dramatic similarities between the crime scene in 1983 and 1998, as testified to by MSP Trooper Harry Zimmerman and through the admitted videos, was the most compelling reason the trial court disbelieved Ronning. (78a-87a).

Defendant appealed; and on February 26, 2002, the court of appeals reversed the trial court and remanded for further proceedings. People v Cress, 250 Mich App 110; 645 NW2d 669 (2002). (30a-58a). The People appealed the court of appeals' ruling to this Court.

On June 18, 2002, this Court remanded the case to the Calhoun Circuit Court to conduct an evidentiary hearing on Defendant's claim the People intentionally destroyed the physical evidence in this case. People v Cress, 466 Mich 882; 646 NW2d 469 (6/18/02). (88a). The circuit court filed its opinion and order on August 16, 2002. (89a-113a). On October 23, 2002, this Court granted the People's application for leave to appeal limited to whether Defendant is entitled to a new trial on the basis that there is newly discovered evidence in the form of a confession by another to a crime of which Defendant was convicted. People v Cress, 467 Mich 889; 653 NW2d 407 (10/23/02). (114a).

Additional facts will be set forth as they relate to the case at bar.

## **SUMMARY OF ARGUMENT**

There is simply nothing to support a finding that Michael Ronning's confession was truthful, believable, or supported by testimony at trial. People v Mechura, 205 Mich App 481; 517 NW2d 797 (1994), *lv den* 447 Mich 984; 525 NW2d 452 (1994). In fact, the opposite is true. Ronning admits his confession is self-serving in that he does not want to subject himself to the possibility of being charged with a capital offense in a death-penalty state. A conviction in Michigan would preclude that from happening. Ronning admitted he lied when it was in his interest to do so. Ronning was unable or unwilling to give even the most basic corroborated detail of the killing he claims to have committed. If presented to the jury, it is not probable that this evidence would lead to a different result, particularly in light of the no less than seven witnesses implicating Defendant Thomas Cress.

Unlike People v Mechura, *supra*, the evidence used at trial in the instant case significantly undermines Ronning's credibility. The crime information provided by Ronning during his taped confession is inconsistent with the cause and the manner of the death of Patty Rosansky, the crime scene, and other known facts. Further, the information provided by Ronning at the new trial hearing is of an equally doubtful nature, in that Ronning refused to answer any questions regarding the crime. If the totality of Ronning's information was presented to the jury by the defense, it is not probable a different result would be reached. In fact, the People assert that the opposite is probable. The incorrect and incomplete nature of Ronning's testimony would automatically make his testimony suspect. Combined with the fact that Ronning would be a defense witness who is providing the incorrect information and compared to the evidence against Defendant, a jury would likely discount Ronning and would reach the same result regarding Defendant's guilt. Further, it is unlikely that Ronning would testify at a new trial. Ronning

asserted his Fifth Amendment right at the new trial hearing, refused to answer questions or testify solely because the agreement had not been signed. The agreement is not going to be signed. Thus, it is probable that Ronning will assert the same right at trial. Without this testimony, there is no basis from which to conclude a different result is even possible, let alone probable.

## **ARGUMENT**

### **I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING DEFENDANT'S MOTION FOR A NEW TRIAL ON THE BASIS OF NEWLY DISCOVERED EVIDENCE.**

#### **Standard of Review**

Defendant asserts that he is entitled to a new trial on the basis of newly discovered evidence in the form of a third-party confession by another to the crime of which Defendant has been convicted. The People disagree.

A new trial will be granted on the basis of newly discovered evidence when (1) the evidence was discovered after the trial; (2) the evidence is not cumulative; (3) the defendant could not with reasonable diligence produce the evidence at trial; and (4) a different result is probable on retrial. People v Miller, 141 Mich App 637; 367 NW2d 892 (1985).

The Court reviews decisions on motions for a new trial under a two-prong standard: the trial court's findings are reviewed for clear legal error, while its ruling on the motion is reviewed for an abuse of discretion. People v Lester 232 Mich App 262; 591 NW2d 267 (1998), *lv den* 461 Mich 861; 602 NW2d 388 (1999). An abuse of discretion will be found only if an unprejudiced person, considering the facts on which the court relied, would conclude there was no basis for the ruling made. People v Rockwell, 188 Mich App 405; 470 NW2d 673 (1991), *lv den* 439 Mich 978; 483 NW2d 615 (1992).

#### **Discussion**

In the instant case, the People acknowledge that the confession at issue is newly discovered, is not cumulative, and could not reasonably have been produced at trial. The People argue however that the newly discovered evidence is not such that a different result is probable on retrial because the newly discovered evidence is untrustworthy, incredible, and glaringly

inconsistent with the known facts of the instant case. The People will confine its argument to the narrow question framed by this Court regarding the credibility of Michael Ronning's confession.

In denying Defendant's motion for a new trial, the trial court, in pertinent part, made the following findings of fact and conclusions of law: (1) that the court was convinced that there were multiple blows to the head and neck; (2) that that fact was significant because, despite Ronning's claimed lack of memory, he consistently testified to only striking Rosansky in the head one time and denied striking any other part of her body; (3) that the expert testimony regarding defensive wounds and evidence of strangulation all rebut Ronning's version of the murder; (4) that new evidence was presented from four witnesses who testified that Ronning confided he was falsely confessing to the murder in order to do his prison time in Michigan; (5) that Exhibit 54, the videotape of Ronning trying to find and ultimately identifying the Rosansky crime scene (or one like it) and Ronning's description of the actual crime scene is dramatically different from what the actual crime scene looked like and still looks like today; (6) that the inconsistencies and the contradictions within Michael Ronning's confession cannot be attributed to a loss of memory over the years; and (7) that Defendant failed to sustain his burden of proof in moving the trial court for a new trial. (78a-87a). The People assert that the trial court's findings were not clearly erroneous and that its decision was a proper exercise of discretion that is overwhelmingly supported by the record in this matter.

The credibility of a third-party confession to the crime for which Defendant has been convicted poses unique problems for a court to consider in deciding the issue. On the one hand, no one can doubt that a credible confession by another party to a crime for which someone has already been convicted would be grounds for a new trial. Lebron v The United States Secretary of the Air Force, 392 F Supp 219, 224 (1975). On the other hand, attempts by one defendant to

take full responsibility after trial and conviction are common and should be viewed with extreme skepticism. United States v Benavente Gomez, 921 F2d 378 (1<sup>st</sup> Cir 1990).

Where there is a grave question of the credibility of the after-discovered evidence, the role of the trial judge is that of a fact-finder, so much so that the United States Supreme Court has said that an appeal from the trial judge's resolution of the facts should be dismissed as frivolous. That rule has been applied where a third-party confession is the after-discovered evidence upon which the motion for a new trial is founded. Jones v United States, 270 F2d 433 (1960) (citing United States v Johnson, 327 US 106; 66 S Ct. 464; 90 L Ed 562 (1946), Jeffries v United States, 215 F2d 225 (9<sup>th</sup> Cir 1954)).

A motion for a new trial is a remedial procedure designed to serve the ends of justice. That end would not be served if the trial judge simply assumed that a jury would believe the new evidence no matter how untrustworthy the trial judge finds it to be. If the purpose is to be served, without undue abuse, the trial judge must be allowed broad discretion in determining matters of credibility. See Walker v Lockhart, 763 F2d 942, 964-965 (CA 8, 1985).

In the instant case, the trial judge determined that the evidence overwhelmingly and convincingly established that Michael Ronning falsely confessed to the murder of Patricia Rosansky. The court of appeals found fault with virtually all Judge Garbrecht's findings. The People assert that the actions by the court of appeals effectively wiped out the role of the trial judge in hearing this motion, encroached into the province of the trial court in deciding matters of credibility, and erased the deference afforded a trial judge in deciding issues of credibility. See People v Thenghkam, 240 Mich App 29; 610 NW2d 571 (2000).

Moreover, a review of the record in context and giving deference to the trial court would lead a reasonable person to conclude that the confession of Michael Ronning, while admittedly



new evidence, is not such that on retrial a different result is probable. See People v Lester, 232 Mich App 262; 591 NW2d 267 (1998), *lv den* 461 Mich 861; 602 NW2d 388 (1999); Thenghkam, supra.

Further, Michael Ronning's confession cannot be deemed credible or believable for the following reasons: (1) Ronning's testimony was evasive, contradicted by others and by his prior statements, and Ronning refused to answer *any* questions regarding the details of Patty Rosansky's murder; (2) Ronning's confession regarding how he killed Patty Rosansky is inconsistent with the known medical evidence; (3) Ronning's description of the crime scene is contradicted by Trooper Harry Zimmerman's testimony; and (4) Ronning's statements to Timothy Dixon, Melissa Meyer, Rebecca Berry, and Randy Cooley belie his role as the perpetrator of this crime. Each point will be addressed separately for the Court's convenience.

**A. Ronning's Testimony, Though "Newly Discovered", Does Not Entitle Defendant to a New Trial.**

At the new trial hearing, Mike Ronning was called as a witness by Defendant. Defendant's attorney did not ask any substantive questions of Mike Ronning regarding the murder of Patty Rosansky. On cross-examination, however, the Prosecutor attempted several times to question Ronning about the details of the murder he claimed to have committed. Ronning refused to answer any questions regarding his role in and the details of the murder of Patty Rosansky. (148a-154a, 155a-157a; 11/5/97 pp 149-155, 157-159). Thus, any ability to test Ronning's "confession" under oath and in open court was not possible. Lebron v The United States Secretary of the Air Force, 392 F Supp 219, 224 (1975) (confession should be examined in open court). In fact, Ronning has never been subject to cross-examination on his alleged confession. Moreover, Ronning has stated he will not testify about specifics until the agreement is complete. (148a-149a; 11/5/97 pp 149-150). The agreement has been disavowed by the

Prosecution and will not be carried out. Thus, it is unlikely that Ronning will ever come forward at a new trial. Ronning's refusal to testify is a fatal obstacle for Defendant since the fourth requirement for a new trial, different result probable upon retrial, presupposes that the new evidence will be admitted. United States v Kamel, 965 F2d 484, 491 (1992). There is nothing in the record that would indicate or suggest that Ronning intends to testify. In fact based on his testimony to date the opposite conclusion should be drawn. Kamel, *supra*. Furthermore, Ronning has repudiated his confession. Ronning testified that he has told his family he did not commit the murders. (145a; 11/5/97 p 137).

Ronning's testimony contains numerous inconsistencies, evasions, and lies. Ronning testified that during his taped statement confessing to this murder, he lied about his own murder conviction. (158a; 11/5/97 p 161). Ronning said that he was unable to find the crime scene because practically everything had changed. (158a.1; 11/5/97 p 164). This flies in the face of the later testimony of Trooper Harry Zimmerman who testified that the crime scene is virtually the same today as at the time of the murder. (232a-240a; 12/10/98 Vol I, pp 41-53). Trooper Zimmerman's testimony was validated by comparing photos of the crime scene at the time of the murder to new photos and by the videotape admitted into evidence at the new trial hearing.

Ronning testified that he held an upper echelon job at the Arkansas penitentiary, had not had to perform heavy labor, and had the run of the prison. (140a-141a; 11/5/97 pp 84-85). However, on cross-examination Ronning admitted he told Battle Creek Police Department Detective Dennis Mullen he would rather go to death row than stay in Arkansas, that a person can't move or do anything, that they take you out and work you like dogs, and that he had looked into a prison exchange program. (142a; 11/5/97 p 102). Ronning's testimony is a good example of his constant lying regardless of the importance (or lack of importance) of the information.

Ronning's feelings on the Arkansas prison system do not support or refute his claim that he killed Patty Rosansky. Thus, there is no discernible advantage for him to claim he likes or dislikes the prison. Yet despite this, Ronning tells two different stories, demonstrating again his unwillingness or inability to tell the truth.

Ronning testified he tried to get police reports from everyone on the murders that "they (Mullen) thought I was involved in" but that he was unable to obtain any information. (147a; 11/5/97 p 140). On the contrary, cross-examination testimony indicates that Ronning was successful in obtaining some information. Ronning refused to sign a release for his Arkansas attorney to confirm Ronning did not have police reports. (143a-144a; 11/5/97 pp 134-135). Ronning admitted he had read newspaper accounts of the murder (144a; 11/5/97 p 135) and that he had talked to his ex-wife about her conversations with Detective Mullen regarding one of the murders. (146a; 11/5/97 p 138). Ronning acknowledged he had received an affidavit in support of a search warrant against Ronning in one of the three murders he claims to have committed. Later testimony by Detective Mullen shows that significant information regarding the cause and the manner of death was contained in the affidavit Ronning received. (165a-172a; 12/3/98 pp 84-91). All of the foregoing shows a disregard for the truth and that one more opportunity to lie would not make much difference to Michael Ronning. Certainly, Ronning's testimony raises a grave question of the credibility of his "confession" such that the trial judge was within its right to conclude Michael Ronning was not credible. See United States v Johnson, 327 US 106; 66 S Ct 464; 90 L Ed 562 (1946).

Moreover, unbeknownst to the prosecutor or police, Detective Mullen may very well have provided additional information to Ronning through Ronning's Arkansas attorney, Keith Hall, and through Mullen's personal correspondence with Ronning. (268a; 8/8/02 p 166). At the

destruction of evidence hearing ordered by this Court, Ronning's attorney Keith Hall testified for the first time. Hall said that Detective Mullen took him to the Rosansky crime scene as well as shared with him the police file on the murder of Patty Rosansky. (260a, 261a-262a; 8/7/02 pp 12, 23, 24, 25). This exchange took place before Hall began meeting with Ronning to facilitate Ronning's agreement to come to Michigan and before Ronning had made any statements about his involvement in the murder. This exchange was also not known to the prosecutor (267a, 268a; 8/8/02 pp 161, 167, 168) or to Mullen's supervisor (266a; 8/7/02 pp 297-298) both of whom testified that they agreed Hall should not get any information about the specific murder(s) so that they could accurately assess what Ronning knew. At the destruction of evidence hearing, it was obvious both the prosecutor and the police supervisor were shocked that Mullen had provided this information to Hall. (266a; 8/7/02, p 298). Given the newly found information, this Court cannot with any assurance rule out the possibility, even likelihood, that Ronning's "confession" is based on the information given to him or gleaned by him from multiple sources.

**1. Ronning's Confession Is Not Credible Because It Is Inconsistent with the Cause and the Manner of Death.**

The People assert the trial court did not err in finding that the medical testimony contradicted Michael Ronning's version of the manner of Patty Rosansky's death.

On appeal, the court of appeals held that the trial court clearly erred in finding that Ronning's admission of guilt lacked any probative value in establishing Defendant's right to a new trial. Cress, 250 Mich App 110 at 134-135. (30a-58a). Specifically, the court of appeals held that the medical testimony did not preclude the possibility that the murder occurred as Ronning stated; that is, strangulation of the victim followed by the forceful dropping of a rock to the back and left side of victim's head. Cress, 250 Mich App 110 at 133-135. (30a-58a). The People respectfully submit that the court of appeals mischaracterized the findings of the trial

judge and clearly erred in their finding.

At the reopened hearing on Defendant's motion for new trial, several medical experts testified as to the cause and the manner of the death of Patty Rosansky. Additionally, portions of Ronning's taped confession as it related to his description of how he allegedly killed Patty Rosansky was shown to the experts.

The trial judge in reaching his decision reviewed this information as well as the entirety of the record in the instant case. The entire record had been requested by the court of appeals during the review of the People's application for leave to appeal the original decision by the trial court.

The trial judge found that the expert testimony presented convinced the trial court there were *multiple blows* to the head *and neck* and that Ronning was clear and consistent about his claim of only *one blow* to the entirety of Rosansky's body. (78a-87a). The trial court further found that other evidence of defensive wounds, the lack of evidence of strangulation, the linear rod-like object that caused some or all of the bruising, all rebut Ronning's version of how he killed Patty Rosansky. (78a-87a). The trial court's decision was supported by the record and was indicative of the proper exercise of judgment, reason, and logic.

First, the People assert the court of appeals' mischaracterized the trial court's finding. Specifically, the court of appeals erred in interpreting the medical testimony as precluding the possibility of strangulation. Cress, 250 Mich App at 134. (30a-58a).

A review of the trial court findings show that the trial judge did not find that the medical test precluded the possibility of strangulation of Patty Rosansky. Rather, the trial court held that the lack of evidence of strangulation (other than Ronning's claim) in combination with the other medical testimony and the circumstances surrounding Patty Rosansky's death rebut Ronning's

version of how he killed Patty Rosansky. Extensive evidence found in the record on appeal and presented during the reopened proofs hearing support the trial judge's findings.

At trial, the issue of strangulation was raised during the testimony of forensic pathologist Dr. Bader Cassin directly and by pathologist Dr. William Walters indirectly.

Dr. Walters performed the first autopsy. Dr. Walters testified to the external exam of Rosansky's body and the lack of any obvious external injury. (132a-138a; 3/27/85 pp 93-99). Dr. Walters gave an affirmative opinion on the cause of death as multiple skull fractures. (137a-138a; 3/27/85 pp 98-99).

Independent of this testimony is Dr. Walters' report of his autopsy specifically referring to both an external and an internal examination of Patty Rosansky's neck. (60a). The report supports Dr. Walters' testimony. Dr. Walters' report was used at the new trial hearing several times during Defendant's questioning of the medical experts. In fact, Dr. Walters' report was used by Dr. Robert Sundick as one of the bases for Dr. Sundick's opinion. The report indicates the neck was symmetrical, and no external damage or injury was found to the neck. (60a). Further, Dr. Walters' report indicates by the removed structure of the neck and found no injury, fractures, or evidence of trauma to the neck. (60a). This report supports Dr. Walters' trial testimony of no evidence of any external/internal injury or damage other than the skull fracture and consequently no strangulation.

Dr. Bader Cassin who performed the second autopsy could not give an opinion on the possible evidence of strangulation because the neck had already been "manipulated" by Dr. Walters, after which point it is extremely difficult to identify strangulation. Dr. Cassin's testimony makes sense in light of Dr. Walters having performed a first autopsy which included examining and moving the neck. Where there is an obvious and discernible cause of death, there

is no need or requirement that all other possible causes be ruled out. Further, sufficient facts presented at trial coupled with Dr. Walters' autopsy report effectively rule out strangulation.

The circumstances surrounding Patty Rosansky's death and Ronning's admissions also rebut Ronning's claim of strangulation. During his videotaped confession, (Exhibits 7, 8, 9, 54), Ronning claims that Patty Rosansky got into his car without a struggle, that she calmly got into his car, crouched down on the floor while he drove her out to Fort Custer. Once in the woods, he had Patty Rosansky crawl into the back seat and remove all her clothes except maybe her socks, and they smoked a joint. Ronning indicated that while in the car, she never knew Ronning was going to kill her — in fact she laughed and giggled, was not distressed, and was quite comfortable. Ronning stated he told Rosansky he had to go to the bathroom. They got out of the car with Rosansky, still naked, walking ahead of Ronning who held her hair from behind. They walked 20 to 30 feet from the car. Ronning strangled her with a headlock-type hold — both still on their feet and that when Rosansky lost consciousness, he laid her down on the ground. Ronning specifically remembered strangling her for about 4 minutes. Additionally, Ronning said Rosansky never struggled or fought back. Ronning explained that it happened this way because when he strangles someone he puts so much pressure on their neck he must paralyze the victim. That no victim has ever fought back, that they “pretty much went out — lost consciousness right away.”

Ronning stated that after Rosansky lost consciousness, he continued the choke hold, counted to 200 so that he knew she was dead — he checked for a pulse, found none; and he also knew from checking that Patty Rosansky was not breathing. According to Ronning, Patty Rosansky never said a word.

The words Ronning used to describe Patty Rosansky's death; i.e., she laughed and

giggled, was quite comfortable, never knew he was going to kill her, never struggled, never fought — almost immediately lost consciousness, and he “laid her down on the ground”, suggest an almost peaceful, quiet death. Nothing about the condition of the body or the crime scene support Ronning’s claim.

Patty Rosansky’s death was violent, aggressive, and physical; the exact opposite of Ronning’s claim. Evidence shows she was not naked; she had on a shirt, panties, socks, and a sanitary napkin when she was killed. (211a-212a, 213a-216a; 12/9/98 Vol II, pp 30-31, 12/10/98, Vol 1, pp 13-16).

Further, the court of appeals is wrong in finding that expert testimony regarding the presence of defensive wounds was inconclusive. Detailed testimony shows there were numerous bruise-type injuries *that Dr. Cassin identified as defense type wounds*.

At trial, Dr. Cassin testified that he was aware of the differences between discoloration due to decomposition and discoloration due to bruising. (124a-125a; 3/21/85 TR II pp 173-174). Dr. Cassin also explained what a defensive wound was and described his knowledge of defensive wounds.

Specifically, Dr. Cassin testified that there was a separate independent injury to the back of Patty Rosansky’s neck. (116a-119a; 3/21/85 TR II, pp 163-166). It occurred before death and before the blow to the skull. The injury would have caused pain but not loss of consciousness. (118a-119a; 3/21/85 TR II, pp 165-166). There was no question in Dr. Cassin’s mind this was a bruise. He testified he examined it visually and subcutaneously. (116a, 119a; 3/21/85 TR II, pp 163, 166). Further, that the shape of the bruise indicated it was caused by a linear rod-like object. In other words, Patty Rosansky was hit in the back of the neck by the killer. Ronning said he only hit her once in the head, not neck.



Additionally, at trial, Dr. Cassin testified to defense-type injuries and bruising to Patty Rosansky's hands. (121a, 128a-131a; 3/21/85 TR II, pp 170, 214-217). These injuries were to both hands and were similar to those injuries observed on the back of the neck. The bruising to the hands, like the bruising to the neck, occurred before death and were inflicted with an object. (122a-123a; 3/21/85 TR II, pp 171-172). Injuries to the hand were inflicted at the same time as injury to the neck. (120a; 3/21/85 TR II, p 169). Dr. Cassin testified to the same type of injury to Patty Rosansky's legs, before death, and inflicted with an object. (122a-123a; 3/21/85 TR II, pp 171-172). Further, Patty Rosansky had hair in her hand. At the new trial hearing, Dr. Cassin affirmed his trial testimony findings. Clearly, significant testimony exists regarding separate blows to Patty Rosansky's skull, neck, hands, legs, and buttocks.

In their opinion, the court of appeals stated, "Dr. Cassin testified at trial, consistent with Ronning's recollection of the victim's murder, that he found no indications of a struggle." Cress, 250 Mich App at 134, fn 17. (30a-58a). The court takes Dr. Cassin's testimony out of context and is incomplete. What Dr. Cassin testified to is that his definition of a struggle is two people participating or fighting back. (130a; 3/21/85 TR II, p 216). It did not appear as if Patty Rosansky fought back. She did, however, try to *fight off* her assailant. Dr. Cassin testified that the defense-type injuries in the instant case are those of someone blocking or warding off the blows. (121a-122a; 3/21/85 TR II, pp 170-171). In context, the court of appeals is incorrect in asserting Dr. Cassin's testimony is consistent with Ronning's claim of no struggle. The evidence indicates that even if not technically "fighting back", Patty Rosansky was active and moving. Michael Ronning testified to virtually no movement by Patty Rosansky. That is simply not true. The numerous bruises and impacts to Patty Rosansky's body unequivocally refute Ronning's claim of no struggle.

Other inconsistencies must also be noted. Patty Rosansky's mitten was found bent at the fingers and dug into an incline in the terrain some distance from where the body was found. Hair was found clutched in her hand. A comparison of the hair ruled out Cress and Ronning, but not Rosansky herself. (263a, 242a, 265a; 8/7/02 pp 213-221). These are additional indications of activity before death.

Finally, Patty Rosansky was brutally raped before her death. (126a, 127a; 3/21/85 TR II, pp 177, 180). Michael Ronning has a specific memory that he did not, could not have sex with this victim. (Exhibits 7, 8, 9).

Ronning's claim is that Patty Rosansky was not beaten, not hit more than 1 time with a rock, not a linear object; that Patty Rosansky never knew what was coming at her, didn't make a sound or a struggle or anything. She simply went out, followed by Ronning laying her on the ground. The court of appeals concluded that Ronning's description of the way he killed Patty Rosansky was possible. If so, it is only in the sense that anything is possible, and only if Ronning's words are taken out of context and isolated from the sum of the crime scene evidence and expert testimony. Certainly, a close review indicates it is not plausible, or likely, or reasonable.

Next, the court of appeals mischaracterized the testimony when it held that the trial court erred in finding that the expert testimony precluded the possibility of one blow causing the type of injury that caused Patty Rosansky's death. Cress, 250 Mich App at p 133. (30a-58a).

The expert testimony did not conclude that 1 blow *could not* have caused the damage. Rather, the experts overwhelmingly concluded that 1 blow, *as described by Ronning*, could not have caused the damage. (245a-248a; 203a, 204a-206a - 12/10/98 Vol I, pp 140-143; 12/4/98 pp 26, 28-30). Ronning said he lifted a bowling ball type rock over his head and threw the rock

down on Patty Rosansky's head. The trial court found that this act did not occur. The explanation for the trial court's finding is due to several factors including testimony about the amount of force required to inflict such an injury.

Dr. Cassin testified at the new trial hearing that the amount of force required to cause the injury, if it was the result of *one blow*, would be like striking your head on a hard surface like a sidewalk or driveway after jumping or falling from a high level, several stories up. (245a-248a; 12/10/98 Vol I, pp 140-143). Dr. Cassin did not believe that the manner in which Ronning claims to have inflicted the skull injury could have caused the damage that resulted. (246a-251a; 12/10/98 Vol I, pp 141-146). Dr. Cassin's new trial testimony is different and more specific than his trial testimony. At trial Dr. Cassin testified that the skull injury could have been caused by the drop of a heavy rock to the head from a height of several feet, such as six feet. (115a; 3/21/85 TR II, p 161). At the new trial hearing, Dr. Cassin candidly stated that the change or modification in his testimony now is due to the fact that he has many more years' experience, has seen many more head injuries, and is a better forensic pathologist. If the experts are to be believed, Dr. Cassin's testimony about the amount of force is significant. Dr. Laurence Simson's testimony agrees with Dr. Cassin's more recent testimony. Drs. Simson and Cassin are forensic pathologists. Defense expert Dr. Sundick testified he could not give an opinion on the amount of force. Dr. Sundick testified a forensic pathologist is the proper holder of this information. Thus, Dr. Cassin's or Dr. Sundick's testimony must be accepted as true. As such, the findings of the trial court are completely consistent with the evidence presented by all the expert witnesses.

While the court of appeals is correct in finding that no expert could precisely state the number of blows, we know from Dr. Cassin's testimony that there were at least several: one to the back of the skull, one blow to the neck, one separate independent blow to Patty Rosansky's

hands, at least one to Patty Rosansky's legs, and at least one to her buttocks. Under no circumstances would logic, reason, or judgment lead to a conclusion that Michael Ronning's distinct memory of only one blow is consistent with Dr. Cassin's testimony. (See People v Thenghkam, 240 Mich App 29; 610 NW2d 571 (2000)). Dr. Cassin repeatedly testified to blow after blow to the body of Patty Rosansky before her death.

The same conclusion holds true for Dr. Simson's findings. Dr. Simson admittedly could not state with any certainty the total number of blows. He was however able to testify to a minimum number of blows. Dr. Simson stated there were at least 2 blows to the back and side of Patty Rosansky's skull. (199a, 200a-201a, 202a; 12/4/98 pp 19, 20-21, 25). A separate independent blow caused the injury to the neck. Dr. Simson testified that, upon viewing Ronning's taped confession showing how he killed Patty Rosansky, the injuries he observed were inconsistent with Ronning's description. (203a, 204a-206a; 12/4/98 pp 26, 28-30). Additionally, Dr. Simson stated that he could not envision a scenario in which all the damage was caused by a single blow. (206a; 12/4/98 p 30).

Dr. Sundick, Defendant's expert, stood alone in testifying that one blow as described by Ronning could have caused the injury to Patty Rosansky's skull. The size of the object described by Ronning and the manner in which Ronning forcefully threw down the rock from a raised position all seemed a possible explanation to Dr. Sundick as the cause of the skull injury.

However, when pressed to explain the amount of force that would be necessary to cause this type of injury, Dr. Sundick stated he could not give an opinion on the amount of force and that a forensic pathologist would have to provide such information. (255a-256a, 257a, 258a-259a; 2/9/99 pp 93-94, 100, 117, 123). Dr. Cassin and Dr. Simson did provide that answer. The answer as previously stated was in direct conflict with and unequivocally refutes Michael

Ronning's confession as to the injury to Patty Rosansky's skull.

In summary, it is possible that one blow caused the injury to the back of Patty Rosansky's head. However it is not possible that the injury was caused in the manner described by Michael Ronning. Further, the additional blow to the neck, as well as the defensive-type bruises to the hands, legs, and buttocks are not explained by Michael Ronning's confession other than to say it did not happen. Unless this Court is able to conclude the additional injuries did not happen, then it must find the court of appeals mischaracterized the testimony and improperly attributed error to the trial judge.

## **2. Ronning's Confession Is Inconsistent with the Known Crime Scene Evidence.**

Detective Mullen testified that he did not provide Ronning with any information about four of the murders Mullen thought Ronning committed. Those murders were of Maggie Hume, Patty Rosansky, Kerrie Evans, and Cheri Edwards. A review of the testimony and the exhibits indicate differently. For example, in 1987 Detective Mullen served a search warrant on Ronning regarding the murder of Maggie Hume. The affidavit contained Maggie Hume's name, date of birth, address, location of the body in the closet, manner of death, approximate time of death, and times that Maggie Hume was alone. (165a-172a, 173a; 12/3/98 pp 84-91, 108). The affidavit also contained statements from Ronning's family regarding Ronning's whereabouts on the night of the murder. (172a; 12/3/98 p 91). It was also apparent that Ronning had some information regarding Maggie Hume in that he asked Detective Mullen about Maggie Hume's boyfriend (169a; 12/3/98 p 88) before Detective Mullen ever told him anything except the name.

As to Patty Rosansky, Ronning was told the body was found in the western part of Battle Creek, away from downtown towards McDonald's in Urbandale, the Fort Custer area. (174a-179a; 12/3/98 pp 111-116). Ronning was also told that Detective Mullen believed a man was

wrongfully convicted of the murder of Patty Rosansky. (174a; 12/3/98 p 111).

As to Kerrie Evans, Ronning was told it was the third murder and that it occurred in Bellevue where Ronning lived.

Equally important was what Ronning was not told; that is, that Detective Mullen also suspected Ronning of killing Cheri Edwards. Detective Mullen only told Ronning about three killings. Ronning testified about the same three killings.

Detective Mullen testified that Ronning agreed to testify to the murders as he remembered without trying to obtain outside information. Facts and testimony do not support Detective Mullen's claim.

Ronning indicated he tried to get information from everyone. (144a, 147a; 11/5/97 pp 135, 140). Evidence was introduced of Michael Ronning subscribing to the Battle Creek Enquirer, and reference was made to cancel his other subscription. Ronning told Timothy Dixon, Melissa Meyers, and Rebecca Berry he received some information about the murders from outside sources, had memorized it, and repeated it back to Detective Mullen. (183a; 12/3/98 p 142). Further, Dixon stated Ronning said it was taking so long to get him to Michigan he was starting to forget the facts. (183a; 12/3/98 p 142). It is undisputed that Channel 41 presented a detailed story of Maggie Hume's and Patty Rosansky's murders and that Michael Ronning corresponded with Channel 41 regarding the news special. It is also undisputed the Channel 41 special was aired before Ronning gave his statements.

When confronted with inconsistencies or contradictions in Michael Ronning's statement, Detective Mullen rationalized or justified virtually every one. According to Detective Mullen, the reason Ronning could not locate the crime scene was because Ronning had not been told how the area had changed since 1983. (193a-196a, 197a-198a; 12/3/98 pp 215-218, 231-232).

Detective Mullen testified that when Ronning was taken to the crime scene, the reason Ronning could not find the site of the body was because Detective Mullen had picked the wrong path to enter the scene. This confused Ronning and that is why Ronning could not find the spot he claims to have dumped the body. The fact that Ronning could not remember the river is not significant. According to Detective Mullen if you enter from the north, you'd never even see water. (193a-196a; 197a-198a; 207a-208a; 12/3/98 pp 215-218, 231-232; 12/9/98 Vol I, pp 108-109).

Further, Detective Mullen acknowledged that during the trip to the Rosansky crime scene, Detective Mullen pointed out specific areas to Ronning. (208a; 12/9/98 Vol I, p 109).

Simply stated, Ronning could not find the general area of the murder of Patty Rosansky and could not find the specific site even when he was taken to the crime scene by police officials. (Exhibit 54). This failure occurred despite Ronning's claim that he dumped Patty Rosansky's body in an area he lived near as an adult. It is obvious that Ronning does not know where the crime scenes were. The obvious reason is because he did not commit the crime.

Nor can Ronning's total inability to locate the scenes be attributed to a failed memory or a change in geography. This is so for the following reasons: (1) Exhibit 25, the map drawn by Michael Ronning, clearly shows an area identified by Ronning as the crime scene and site of the body. The map places the scene and the body near the V.A. Hospital at Fort Custer. It actually appears to be right near the entrance to Fort Custer. The map is wrong. The map does, however, mirror Detective Mullen's testimony of what he told Ronning about where the murder took place ... out Michigan avenue, Urbandale, Fort Custer. For the Court's information, the entrance to Fort Custer has a cannon. In Exhibit 54 when Ronning takes police to the purported crime scene, he goes straight to Fort Custer; and the videotape shows the cannon. (2) The testimony of MSP

Trooper Harry Zimmerman and the exhibits introduced through him refute a conclusion that Ronning's memory has failed. Specifically, Michael Ronning pointed investigators to a flat area in the woods as the murder scene. Trooper Zimmerman's testimony and the photographs show Rosansky's body was found at the bottom of a gully or ravine described as 7 to 8 feet deep on both sides. (242a-244a; 12/10/98 Vol I, pp 109-111; Exhibit 54). The ravine is as distinct in appearance today as it was in 1983. (229a-230a; 12/10/98 Vol I, pp 42-43). Ronning said Rosansky was nude when he murdered her. Trooper Zimmerman testified and the photographs show Rosansky had a sweater, bra, socks, and underwear on when found. (215a-216a; 12/10/98 Vol I, pp 15-16). Ronning described how he turned and threw the rock after striking Rosansky in the head. Further, the rock traveled 20 to 30 feet including rolling after he threw it. Trooper Zimmerman testified that if the perpetrator was standing over the body as indicated by Ronning and threw the object left or right, it would strike the ravine and roll back down; no rocks were found in the immediate area. (217a-218a; 12/10/98 Vol I, pp 18-19). Ronning said he threw Rosansky's clothes approximately 20 feet from the body. Trooper Zimmerman found the clothes folded and placed between trees on top of an approximate 9-foot mound. (219a-227a; 12/10/98 Vol I, pp 20-28). Distinctive landmarks near the body were not recognized by Ronning, *i.e.*, the river, the abandoned pumping station at the end of the ravine, a large sheet metal roof vent found a few feet from the body - still there today. (238a, 229a, 238a; 12/10/98 Vol I, pp 51, 42, 51). Trooper Zimmerman testified that he was able to go to and find the crime scene easily despite the fact that 14 years had passed since he was last there. (228a-229a; 12/10/98 Vol I, pp 41-42). Further, in Trooper Zimmerman's opinion, the crime scene remains as distinctive and similar today as at the time of the murder. (228a-240a; 12/10/98 Vol I, pp 41-53).

The court of appeals disagreed with this finding stating that in reviewing the crime scene



videotape they themselves found it difficult to distinguish the different areas. The People respectfully submit that the court of appeals' difficulty is not relevant to an abuse of discretion review. Rather, it is the trial judge's ability to make those distinctions and finding that are paramount. In the instant case, the trial judge was able to make those findings regarding the crimes scene. The trial judge's findings were supported by competent police testimony of Trooper Zimmerman, along with photos and videotape. The trial judge's findings cannot be deemed clearly erroneous under these circumstances. The court of appeals must be held to the standard under which they state their review occurred, namely an abuse of discretion standard. If held to this standard, this Court should determine the court of appeals' findings were erroneous.

Based on the foregoing, Michael Ronning's description of the crime scene and his attempts to locate the same, border on the absurd and show lack of knowledge, not lack of memory. This conclusion is supported by the testimony of Timothy Dixon.

**B. The Testimony of Dixon, Berry, Meyers, and Cooley Further Undermines Ronning's Credibility.**

Timothy Dixon testified that he was in jail in Kalamazoo the same time that Michael Ronning was there. Dixon stated that Ronning told him that a detective visited Ronning in Arkansas because the detective thought Ronning had committed some murders in Michigan. Ronning went along with the detective because Ronning wanted to finish his prison time in Michigan. (180a; 12/3/98 p 136). Ronning told Dixon that he first told the detective that he didn't want to talk to him. But because the detective was persistent he agreed. (181a; 12/3/98 p 137). Ronning told the detective he wanted an attorney. (181a; 12/3/98 p 137). Dixon testified that Ronning told him the detective either told Ronning the victims' names or that someone was in jail for a crime the detective believed Ronning committed. (182a; 12/3/98

p 138).

Timothy Dixon testified that Ronning told Dixon he did not commit the murder, that he was making it up, and that the detective was unknowingly giving Ronning information that Ronning was repeating back as his knowledge of the crime. (180a, 183a-184a; 12/3/98, pp 136, 142-143). That Ronning had received information about the crimes from another source. (182a, 183a; 12/3/98, pp 138, 142).

Dixon testified that Ronning was taken out of jail in order to show the police where the crime scenes were located (185a-187a; 12/3/98 pp 146-148). The trip was taken in a little bus. (187a; 12/3/98 p 148). Dixon said Ronning had told him he was going to tell the police he couldn't find the scenes because it had been too long of a time and everything had changed. (186a; 12/3/98 p 147). This is exactly what Ronning told police.

Further Dixon testified that after Ronning first attempted to find the crime scene, Ronning told Dixon he couldn't find the crime scene, and Ronning thought he had been found out and would be sent back to Arkansas. (185a-187a; 12/3/98, pp 146-148). Dixon testified that Ronning said the second attempt to find the crime scene went better. The detective was "helping him pinpoint the place and playing hot and cold" and was unwittingly providing clues from which Ronning was able to better lead the group. (188a-189a; 12/3/98, pp 149-150). Further, the detective was describing how the scene used to look. (189a; 12/3/98 p 150). The videotape shows the trips exactly as described by Dixon. In fact, if you compare Dixon's testimony to the videotapes of all Ronning's trips to the crime scenes, you would conclude Dixon was present because his testimony so dramatically and accurately parallels Ronning's crime scene behavior. Defendant tries to lessen the impact of Dixon's testimony by claiming Dixon received great favor in exchange for his testimony. A reading of the "deal" Dixon received (190a-191a; 12/3/98 pp

158-159) shows that in reality Dixon received nothing of value for his testimony. Further, that Dixon was told up front by the People that what Dixon was asking for (a reduction in sentence as a habitual) was contrary to law. (192a; 12/3/98 p 160).

Even if this Court finds that Dixon did have motivation to lie, he had to get the information from somewhere. The type of information of what Ronning was planning to and ultimately did say could only have come from Ronning himself.

Moreover, Dixon's testimony that Ronning stated that he did not commit the murders and had obtained information of some sort about the crimes was echoed by Melissa Meyers, Rebecca Berry, and Randall Cooley.

Melissa Meyers testified that Michael Ronning is her half brother. (161a; 12/3/98 p 25). Meyers stated that she had consistent contact with her brother both in Arkansas and Michigan. Ronning admitted to Meyers that he committed the murder in Arkansas but said he did not commit the murders in Michigan. (162a, 163a; 12/3/98 pp 29, 32). Rather, Ronning told Meyers he was falsely confessing in order to work out a deal to spend his prison time in Michigan. (163a; 12/3/98 p 32). Ronning told Meyer he had obtained factual information about the murders and was able to memorize the facts from there. (164a; 12/3/98 p 33).

Rebecca Berry testified to the same information as Melissa Meyers. That is that Ronning admitted the Arkansas murder, denied the Michigan murders, and was going to falsely confess to the Michigan murders in order to be able to spend his prison sentence in Michigan. (252a-254a; 12/10/98 Vol II, pp 5-7).

Randall Cooley testified he visited Ronning several times at the jail. Cooley's wife is a relative of Ronning. Ronning told Cooley that he did not commit the murders in Michigan but was confessing so that he could come to Michigan. (159a; 12/3/98 p 7). Ronning repeated this

to Cooley on several occasions. (160a; 12/3/98 p 9). Further, Ronning admitted to the murder in Arkansas.

What is striking about the testimony of Meyer, Berry, Cooley, and Dixon is the similarity of their testimony. They do not have much, or in some cases any, contact with each other yet the information from Ronning is the same. If consistency of information is an indicator of credibility, then Ronning was truthful in stating he did not commit the murders in Michigan. All in all, the testimony of Dixon, Meyers, Berry, and Cooley severely undermine the credibility and believability of Ronning's confession to the murders in Michigan.

**C. Ronning's Polygraph Would Not Cause a Different Result on Retrial and Did Not Entitle Defendant to a New Trial.**

Ronning did not actually confess to the murder of Patty Rosansky during his polygraph examination. Ronning stated that he killed three people in Michigan. He did not indicate who these three people were and was not specifically asked whether he murdered Patty Rosanky. Further, Defendant himself was examined by the jury; they judged the credibility of his alibi testimony and found it insincere.

However, even had Ronning's polygraph examination been more specific, it would be of no import since it was not necessary for Judge Garbrecht to consider polygraph testing in his analysis of Defendant's new trial motion, and in no way changes the nature of the People's case at trial. (See Argument, *infra*). Contrary to the Michigan Court of Appeals' decision in this case, People v Cress, 250 Mich App 110, 137; 645 NW2d 669 (2002) (30a-58a), (the Michigan Court of Appeals found it was an error of law for the trial court not to discuss the polygraph), the trial court has discretion to consider, or not to consider, the results of a polygraph examination when presented with a motion for new trial based on newly discovered evidence. People v Barbara,

400 Mich 352; 255 NW2d 171 (1977).

In *Barbara*, this Court discussed several criteria which the trial court should utilize if it elects to consider the polygraph results. *Barbara, supra* at 412-413. A notable criterion, among those discussed, is that the test results only be applied to credibility determinations in general. *Barbara, supra* at 413. As clearly outlined earlier in the People's discussion on appeal, there are a number of substantially compelling facts and circumstances that have occurred in this case that display Ronning's lack of credibility. One of the greatest of these is Judge Garbrecht's prior determination after the re-opening of the proofs that Ronning is indeed incredible. *See Cress*, 250 Mich App at 120-124. (30a-58a).

Furthermore, polygraph examination results are still considered untrustworthy. *See, e.g., Barbara, supra* at 402. For example, one treatise on the topic notes that "[e]ven after the *Daubert* [<sup>1</sup>] decision's ruling that the 'general acceptance' test is only one factor to be considered when evaluating the admissibility of expert testimony, most courts continue to exclude expert testimony concerning polygraphs." *Wharton's Criminal Evidence* (15<sup>th</sup> Ed, Vol 3) 13:42, 596 (citations omitted). Further, in response to an argument that the denial of polygraph evidence was an affront to a defendant's right to present a defense under the Sixth Amendment, Justice Thomas wrote for eight justices that "there is simply no consensus that polygraph evidence is reliable." *United States v Scheffer*, 523 US 303; 118 S Ct 1261, 1262, 1277; 140 L Ed 2d 413 (1998).

#### **D. Conclusion**

Finally in addition to the above reasons for this Court to find that Ronning is a false

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<sup>1</sup> *Daubert v Merrell Dow Pharmaceuticals, Inc.* 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993).

confessor, some additional though limited support can be found in the quality of the original trial evidence.

At trial, no less than six witnesses testified that Defendant had admitted to killing Patty Rosansky. Further, Defendant was unsuccessful in presenting his alibi despite having called witnesses to support that defense. Defendant claimed he was working. Alibi witness Marion Adkins was only able to testify that she assumed Defendant was working but did not have any personal knowledge of that fact. (139a; 4/16/85 p 870). Ronning's confession does not change the quality of the evidence presented at trial. If a different result is probable on retrial, it is because juries today expect a higher degree of sophistication in the era of DNA as it relates to evidence. That was not the case or even a possibility in the early 1980s nor is it a basis for a new trial. Michael Ronning is a means to an end for Defendant receiving a new trial. Defendant apparently thinks that if he can get a new trial, then there is a chance of beating a circumstantial case with a contemporary jury; more simply, he gets another chance after his conviction was affirmed years ago. To allow that to happen would destroy the sanctity and finality afforded a jury's decision. Karel, *supra* at 490.

In short, Ronning's confession "bears no resemblance to the persuasive assurances of trustworthiness." D.S.A. v Circuit Court Branch, 942 F2d 1143, 1152 (1991). As was the case in D.S.A., Ronning has motive to lie and has shown through various means he is not credible.

Thus, this Court should conclude that Defendant is not entitled to a new trial on the basis of newly discovered evidence; that Calhoun Circuit Judge Garbrecht's findings are supported by the record; and then this Court should affirm the trial court's denial of Defendant's motion for a new trial for the murder of Patty Rosansky.

**RELIEF REQUESTED**

Plaintiff-Appellant prays this Honorable Court reverse the holding of the Michigan Court of Appeals and re-instate the conviction and the sentence set by the trial court.

Respectfully submitted,

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DATED: December 16, 2002.

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